IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. 23-00598

DIRECTOR OF PUBLIC PROSECUTIONS

v

TERENCE NUGARA

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| JUDGE: | HIS HONOUR JUDGE WRAIGHT |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: | 26 September 2023 |
| DATE OF SENTENCE: | 5 October 2023 |
| CASE MAY BE CITED AS: | DPP v Nugara |
| MEDIUM NEUTRAL CITATION: | [2023] VCC 1784 |

**REASONS FOR SENTENCE**

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| Subject: | SENTENCING – Criminal law. |
| Catchwords: | Plea of guilty – Obtaining a financial advantage by deception – Theft – Very serious offending over a protracted period – No prior criminal history – Moral culpability assessed as very high – Limited evidence of genuine remorse – Prospects of rehabilitation assessed with caution – Accused sentenced as Continuing Criminal Enterprise offender – COVID-19 pandemic. |
| Legislation Cited: | *Crimes Act 1958* ss 74(1), 82(1); *Sentencing Act 1991* ss 6AAA, 6I, 6J, 18. |
| Cases Cited: | *Worboyes v The Queen* [2021] VSCA 169. |
| Sentence: | Imprisonment for a period of 9 years and 11 months with a non parole period of 6 years and 6 months. |

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| APPEARANCES: | Counsel | Solicitors |
|---|---|---|
| For the DPP | Mr D Brown | Office of Public Prosecutions |
| For the Accused | Mr M Sturges | Angus Cameron Lawyers |

HIS HONOUR:

1 **Introduction**

2 Terence Nugara, you have pleaded guilty to:

(a) 37 charges of obtaining a financial advantage by deception contrary to s 82(1) of the *Crimes Act 1958*, which carries a maximum penalty of 10 years imprisonment (Charges 1 to 8, 10 to 15, and 17 to 39); and

(b) two charges of theft, contrary to s 74(1) of the *Crimes Act*, which carries a maximum penalty of 10 years imprisonment (Charges 9 and 16).

3 All but 13 of the charges are rolled-up charges as particularised on the indictment.[1]

4 You have no prior criminal history.

5 **Circumstances of the offending**

6 A detail document entitled 'Further Amended Prosecution Opening upon Plea', dated 22 September 2023, was tendered on the plea ('Prosecution Opening'). Following the plea hearing on 26 September 2023, further amendments were made to that document by the prosecution without objection. I do not propose reproducing the contents of the Prosecution Opening in full in these sentencing remarks. Instead, I will provide a summary of your offending and make reference to the paragraph numbers of the Prosecution Opening where appropriate.

7 *Overview*

8 This offending was committed between 10 October 2014 and 9 January 2019.

9 At the time, you were the principal in a financial services and planning business called Skynet Financial Services Pty Ltd ('Skynet'). You were licensed to provide

[1] The charges which are not rolled-up in nature are Charges 4, 5, 8, 10, 20, 26, 28, 30, 32, 33, 35, 36 and 38.

financial services advice and deal in financial services products as a representative of Financial Planning Services. That authorization was suspended in March 2015 and terminated in October 2016. In the period of the offending, you falsely represented to your clients that you were developing properties from which they would receive high returns on their investments after two to three years. You convinced 38 victims to invest in one or more of those properties. Your clients and investors were unaware of your suspension and later termination of your authority to provide financial services advice and deal in financial services products.

10 You represented to victims that you were developing properties including the following:

(a) 1258 Malvern Road, Malvern;

(b) 1220-1224 Malvern Road, Malvern;

(c) 281 Barkers Road, Kew;

(d) 4 Kingston Street, Malvern;

(e) 267 Bluff Road, Sandringham;

(f) 221 and 225 Burke Road, Glen Iris; and

(g) property located in Bali, Indonesia.

11 Except for the Bali and the Bluff Road properties, the properties were in fact developed by Ray Werden and his group of companies called Werden Property Group ('WPG').

12 By an oral agreement with Ray Werden in 2013, you were paid a finder's fee of 5 per cent of the capital raised for any clients that you referred to WPG for investment in development projects. Under this agreement, the investors you referred to WPG would pay their money into Mr Werden's trust account or the

account of the WPG company carrying out the development. The investors would be investing in units in a unit trust or shares in the company carrying out the investment. Mr Werden allocated the number of units in the unit trust or shares in the company by the quantum of their investments.

13 There were 24 investors that you referred to WPG between 2013 and 2015. They were in respect of WPG's developments at 281 Barkers Road, 1220-1224 Malvern Road, 1258 Malvern Road, 4 Kingston Street and 93-97 Rose Street, Essendon. When you referred a client to WPG, Mr Werden would email you the following documents:

(a) a receipt for the payment;

(b) a Unit or Shareholder certificate recording units or shares the investor held in the property development;

(c) progress updates about the property developments;

(d) documents recording interim distributions where relevant;

(e) shareholder statements;

(f) profit / loss statements; and

(g) any other documents relevant to the project.

14 The Bluff Road property was a proposed development in 2017-2018 by a private syndicate comprised of members of Yelena Misterova's family that never proceeded, and the property was sold undeveloped.

15 You represented that the villas in Bali were part of a project to build seven villas in Umalas, Seminyak, Bali. It was represented that the man on the ground was Nic Minniti and that the cost of each villa was $600,000. There was a requirement for investors to pay a deposit of $300,000 with a further $300,000 to be paid upon completion.

16 In most cases, you convinced victims to transfer their savings or roll over monies held in their superannuation accounts to Self-Managed Superannuation Fund ('SMSF') accounts you had arranged to be set up with the Commonwealth Bank ('CBA'). You were given access to those SMSF accounts to make investments in the purported property developments. Some of the victims were unaware that you had access to their accounts when the purported investments were made. You would transfer money from these SMSF accounts into one of two accounts you held at the Bank of Melbourne. In other cases, the victims made direct payments to those accounts usually from their savings accounts or superannuation fund accounts. All 'investments' were paid into two Bank of Melbourne accounts held by you. As a result of the deception, $10,072,061.93 was obtained by fraud or stolen.

17 *Further background*

18 By way of further background, you registered Skynet in April 2009. You were the sole Director, Secretary and Shareholder of the company.

19 From 26 May 2009 to 19 April 2013, you were a licensed Authorised Representative of Sentry Financial Planning Pty Ltd. On 24 May 2014, you and your company Skynet became a licensed Authorised Representative of Financial Services Partners Pty Ltd ('FSP'), until 10 October 2016. During this period, FSP was owned by the ANZ Group. Under FSP's Australian Financial Services Licence, you were authorised to provide advice on and deal in financial products and provide advisory services in accordance with FSP's contractual framework and standards (for example, in relation to competency and integrity).

20 In 2009, when you were a licensed financial advisor, you met Raymond Werden, a property developer and the Managing Director of WPG. You struck up a professional working relationship with Mr Werden and established intimate knowledge of the WPG business model. This included planning, permits and cost analysis which related to various property developments and the use of

investment syndicates. These syndicates were used to fund the purchase of land and construction of luxury apartment complexes. They consisted of approximately 20 to 25 investors each.

21 You used your position as a financial planner to convince your clients to change their Superannuation Fund into a Self-Managed Superannuation Fund, where they would invest money derived from their superannuation into property developments with the expectation of a significant financial return.

22 You persuaded your victims to grant you full access to their CBA SMSF bank accounts, which you arranged to be established. You were provided your own personal CBA login which you used to gain access to the victims' SMSF accounts. This allowed you to gain access on a daily basis. The victims trusted you; they knew you by your nickname, 'Rio'.

23 In 2014, you opened two Bank of Melbourne accounts in the name of 'Munro Investment Unit Trust' with you and your wife listed as beneficiaries, signatories, and trustees. You have no affiliations with Munro Investments Pty Ltd, a legitimate investment company.

24 In 2014, FSP conducted an audit on your client files and identified that you did not adhere to FSP's standards, by failing to provide required disclosure documents to clients, and nor did you deliver agreed ongoing service in accordance with their terms of engagement.

25 On 5 March 2015, you were personally served a Notice of Suspension of Authority (licence) for six weeks during which time you were not to provide any personal or general financial advice. On 6 May 2015, you were subsequently served with a Notice of Suspension until further notice. As a result of a review conducted by FSP on 17 August 2016, you received a Notice of Termination advising that your Representative Agreement would be terminated on 10 October 2016. You were no longer licensed to be a financial advisor.

26 Following the cancellation of your licence by FSP in October 2016, you did not apply to any other Australian Financial Services Licensees to have your licence re-instated to continue operating your business.

27 *Particulars of offending*

28 I will now briefly outline your offending in respect of each property or incident of deception.

29 <u>267 Bluff Road, Sandringham</u>

- Obtaining a financial advantage by deception (Charges 1, 2, 3, 5, 6 and 7)

30 The particulars of your offending in respect of 267 Bluff Road in Sandringham are found at paragraphs 18 to 29 of the Prosecution Opening. This offending took place between October 2014 and May 2017 and is encompassed by six charges of obtaining a financial advantage by deception, five of which are rolled-up charges.

31 The victims are Clive Weymouth, Kathleen King, Carol Elliot, Diana Millar, John Wallace and Geoffrey Field, and the total sum of money you obtained from them for the purported purpose of developing 267 Bluff Road was $1,909,901.

32 You convinced each victim that you were responsible for the development and that they would receive a 98.93 per cent return on investment. You provided the victims with a 'Price Area Summary' which detailed the expected cost and profit from the development. In reality, the development was carried out by private investors, without any contribution from outside investors.

33 The victims discovered your deception in various ways. After Mr Weymouth visited the site in 2015 or 2016 and discovered the original building had not yet been demolished, he repeatedly asked you what was happening with the project and you provided him with excuses, including that there were objections to the

project in VCAT. Later on in 2017, when Mr Weymouth was planning his retirement, he attempted to contact you by phone and email to find out about his investment in 267 Bluff Road, to be met with only minimal responses. In a similar fashion, Mr Field drove past the property in about April 2017 when the return on investment was about to become due, and saw the original building was still standing. He then repeatedly enquired with you via email but you did not reply. He later revoked your access to the SMSF account. On 8 August 2019, he received a letter from FSP advising him of the investigation into your conduct. In September 2019, Mr Field was contacted by the Australian Securities and Investment Commission ('ASIC'), who advised him to contact the police. In the case of Ms Millar, she invested her money with you in April 2015 and only discovered your fraud when she was advised by her solicitors years later.

34 Bali Property

- Obtaining a financial advantage by deception (Charge 4)

35 The particulars of your offending in respect of property located in Bali, Indonesia are found at paragraphs 30 to 33 of the Prosecution Opening. This offending took place in early 2015 and is encompassed by a single charge of obtaining a financial advantage by deception. You convinced Diana Millar and her husband Edward Millar to invest $300,000 in a property development in Seminyak. Ms Millar paid the money into your Bank of Melbourne account, in the name of Munro Investments, on 3 March 2015. You emailed her building plans and photographs purporting to be of the ongoing development in Bali. Later forensic analysis of this account revealed the money paid by Ms Millar was never used for any property development in Bali, although $1.67 million was traced into an offshore bank account in Bali.

36 Skynet Financial Services Private Income Fund

- Obtaining a financial advantage by deception (Charge 10)

37 The particulars of this offending against Jennifer Hatfield are found at paragraphs 34 to 36 of the Prosecution Opening. This offending is encompassed by a single charge of obtaining a financial advantage by deception.

38 The victim's husband was an accountant and was responsible for managing his and his wife's SMSF. He passed away in 2008. In about 2010, you took over from a previous financial adviser to Ms Hatfield and she became your client. You offered to do her taxes and provide financial advice and would visit her at her home and have lunch with her. Ms Hatfield would go on to sign paperwork on your advice which enabled the transfer of money to investments recommended by you. Ms Hatfield's children became concerned about her financial dealings with you, with her son-in-law making enquiries on her behalf. After the victim's financial records were reviewed, it was discovered that there had been an investment of $244,000 in the Skynet Financial Services Private Income Fund, and that these investments had been funded through the liquidation of the victim's shareholdings.

39 <u>281 Barkers Road, Kew</u>

- Obtaining a financial advantage by deception (Charges 8 and 24)

40 The particulars of your offending in respect of 281 Barkers Road in Kew are found at paragraphs 37 to 42 of the Prosecution Opening. This offending took place between 2015 and 2017 and is encompassed by two charges of obtaining a financial advantage by deception, one of which is a rolled-up charge.

41 The victims are Tracey Kerr and Steve Thomson, and the total sum of money you obtained from them for the purported purpose of developing 281 Barkers Rd was $432,000.

42 The property at 281 Barkers Road was purchased by WPG on 24 March 2013 with the intention of developing it into a residential apartment complex. You convinced both victims that this was a project you were developing and they

transferred you money for the purpose of investing in the project. In a statement to police, Mr Werden confirmed that neither Ms Kerr nor Mr Thomson were ever referred to him by you as investors, and they never made any investment in WPG's Barkers Road project.

43 By the time of this offending, you were operating your financial services business without a licence since your authorisations to act as a representative of FSP had been suspended in March 2015.

44 4 Kingston Street, Malvern

- Theft (Charges 9 and 16)

45 The particulars of your offending in respect of 4 Kingston Street in Malvern are found at paragraphs 43 to 50 of the Prosecution Opening. This offending took place between 2014 and 2018 and is encompassed by two rolled-up charges of theft.

46 The victims are Peter Little and Ann Gallagher, and the total sum of money you obtained through this offending was $676,155.

47 In brief, both victims had made investments in the Kingston Street development, which was completed by WPG in late 2017. The return on investment for both victims was paid into their respective SMSFs but the victims were not aware of this. You later accessed these SMSFs and made numerous transfers of money into your Bank of Melbourne account. In the case of Mr Little, you advised him that these funds were being invested into another property development.

48 I note that in Ms Gallagher's case, you also accessed her SMSF bank account and diverted money into your own account prior to the return on investment being paid to her. You told her this money was obtained for the purpose of investing in the Kingston Street development.[2] When Ms Gallagher subsequently discovered you had obtained money from her SMSF bank account, she took

[2] Prosecution Opening at [48].

legal action against you, and you eventually repaid her a total of $150,000 in three separate payments.

49 At the time of this offending, you were not licensed to deal in financial services products or give financial services advice.

50 1220-1224 Malvern Road, Malvern

- Obtaining a financial advantage by deception (Charges 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29)

51 The particulars of your offending in respect of 1220-1224 Malvern Road in Malvern are found at paragraphs 51 to 72 of the Prosecution Opening. This offending took place between 2016 and 2018 and is encompassed by 15 charges of obtaining a financial advantage by deception, 12 of which are rolled-up charges. The victims are Amiranda Nesci, Carrol Bond, Bradley Lee, Sean Collins, Jennifer Williams, Linda Ling, Gerald Gray, Gregory Waugh, Randall Boyce, Benjamin Lay, Janny Adams, Tatiana Korosa, the Keatings (Jamie-Lee, Michael and Jarrod) and Andrew Wall, Jessica Cronin and Sebastian Flecken. The total sum of money you obtained through this offending was $4,042,911.

52 The 1220-1224 Malvern Road property was purchased by WPG in July 2014 with the intention of developing it into a residential apartment complex. You used your intimate knowledge of this project to convince the victims to invest funds from their SMSFs. From March 2015, you were not licensed to deal in financial services products or give financial services advice.

53 As with the Bluff Road deception, the victims in this case also discovered your deception in various ways. For example, Ms Nesci, who had transferred money into your Munro Investments account for the purpose of the Malvern Road investment, emailed you in mid-2019 after the return on her investment was not paid into her account, but received no response from you. She later discovered

that you were not connected to the company named Munro Investments Pty Ltd, and nor were you involved in the development at 1220-1224 Malvern Road.

54 In the case of Ms Korosa, who was referred to you by another victim, she agreed to roll over all her superannuation money into an SMSF to which only you had access. She was, of course, unaware that by this stage you were not operating under any licence to provide financial planning or give financial services advice, or deal in any financial products. After she transferred her money into the SMSF, you transferred $135,294 into your own Bank of Melbourne account and issued Ms Korosa with a fraudulent Munro Investments Unit Trust Certificate. It was not until Ms Korosa received notices from ASIC and the Australian Taxation Office about the SMSF that she attempted to contact you. Your responses were all attempts to brush her off, and she ultimately engaged a solicitor, who attempted to contact you without success.

55 Many of the other victims had very similar experiences with you. The ones who made enquiries with you about the progress of the developments you provided with various unsatisfactory responses, telling one victim that the development was ‘on track’.

56 In a statement to the police, Mr Werden confirmed that none of the 15 victims in this matter ever made investments in WPG’s development at 1220-1224 Malvern Road (or any other WPG development). A forensic analysis of the two Bank of Melbourne bank accounts into which investors' money had been transferred confirmed that none of the funds were used to finance any property development.

57 <u>1258 Malvern Road, Malvern</u>

- Obtaining a financial advantage by deception (Charge 15)

58 The particulars of your offending in respect of 1258 Malvern Road in Malvern are found at paragraphs 73 to 78 of the Prosecution Opening. This offending took

place between 2014 and 2017 and is encompassed by a single rolled-up charge of obtaining a financial advantage by deception. The victims in this matter are Peter and Marie Burns, and the total sum of money you obtained through this offending was $153,000.

59 In September 2014, WPG purchased a property at 1258 Malvern Road, Malvern with the intention of developing a residential apartment complex. You had intimate knowledge of this project through your involvement with WPG. Initially, you emailed Mr Burns, an existing client of yours, and his wife an offer to invest in the other Malvern Road property at 1220-1224. However, prior to the investment being finalized, you emailed again to say you were no longer involved in that project, and that instead the investment would be made in the alternative development at 1258 Malvern Road. WPG unit trust certificates reveal that $1,010,000 was invested into WPG's development at 1258 Malvern Road, Malvern by 'The Burns SMSF' and Marie Burns on 30 May 2014.

60 In September 2016, and without your victims' knowledge, you accessed the Burns' SMSF bank account using your own CBA logon and transferred $50,000 into your own Bank of Melbourne account with '1258 Malvern' as the reference. You no longer had a licence at this stage to deal in financial products. About six months later, you emailed Mr Burns again, inviting another round of investment funding in 1258 Malvern Road. Mr Burns made two more payments and you issued him with a fraudulent 'Unit Holders Certificate' for $103,000, deceiving him into believing that the funds were invested in the development.

61 A forensic analysis of your Bank of Melbourne account revealed that the investments in 2016 and 2017 totaling $153,000 were transferred into that account and not paid to WPG's development of 1258 Malvern Road. Mr Werden confirmed that Peter Burns was not an investor in any of WPG's developments in 2016 and 2017.

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63 <u>225 Burke Road, Glen Iris</u>

- Obtaining financial advantage by deception (Charges 23, 31, 32, 33, 34, 35, 36, 37, 38, 39)

64 The particulars of your offending in respect of 225 Burke Road in Glen Iris are found at paragraphs 79 to 92 of the Prosecution Opening. This offending took place between 2017 and 2019 and is encompassed by 10 charges of obtaining a financial advantage by deception, five of which are rolled-up charges. The victims are Brooke Bennett and her partner Daniel Keating, Brad Schram, Nick Black, Sharon Mill, Lee and Anette De Rooy, Anthony Kellett, Jamie-Lee Keating, Gerald Gray, Susanna Hayden, Steven Bone, and Jeffrey and Karen Luskie. The total sum of money you obtained through this offending was $2,083,824.53.

65 The 225 Burke Road property was purchased by WPG in January 2018 with the intention of developing a residential apartment complex. As with your other victims, you used your intimate knowledge of this project to falsely represent yourself as the developer and convince 10 of your clients to invest. Again, you were not a licensed financial planner or financial services advisor at this time. You convinced the victims to deposit their money from their SMSFs and/or savings accounts into your own Bank of Melbourne account for the purpose of investing in the development. Of course, you never used their money for the 225 Burke Road development or any other WPG development and this was confirmed by Mr Werden.

66 As with the other deceptions you perpetrated, these victims discovered your fraud in various ways, with a recurring pattern being that when they made enquiries with you about their returns on investment being due, you ‘stalled’ and provided unsatisfactory answers. One of your victims, Susannah Hayden, pleaded with you to return her money when she discovered you had transferred a sum out of her SMSF account without her knowledge. After some effort on her part, you returned $12,000 out of $148,000 back to her. In the case of Mr Bone,

he only discovered there were issues with his investments when CBA's fraud team advised him there had been a number of complaints by your clients who were trying – unsuccessfully – to recoup their money. Mr Bone's attempts to contact you were also unsuccessful.

67 <u>221 Burke Road, Glen Iris</u>

- Obtaining a financial advantage by deception (Charge 30)

68 The particulars of your offending in respect of 221 Burke Road in Glen Iris are found at paragraphs 93 to 97 of the Prosecution Opening. This offending took place in 2018 and is encompassed by a single charge of obtaining financial advantage by deception.

69 The victims are Howard Thomson and Peggy Ong, and the total sum of money you obtained through this offending was $150,000. You used your knowledge of this project, obtained from Mr Werden, to convince the victims to invest in the development, promising a financial return of up to 80 per cent. In furtherance of your deception, you took the victims to a development at 281 Barkers Road in Kew, which you said was too late for them to invest in. You then took them to the property at 221 Bourke Road in Glen Iris and claimed it was a new development project. In reality, both the Kew property and the 221 Bourke Road property were developments carried on by WPG. Mr Werden confirmed neither Howard Thomson nor Peggy Ong were investors in those projects. The analysis of your Bank of Melbourne accounts confirmed that none of the monies transferred to you by the victims was ever invested in any property developments.

70 *Police investigation*

71 Police commenced an investigation of you and your business on 21 October 2019. Immigration checks revealed that you and your family had already left Australia on 15 August 2019. Since this time you had resided in a number of

different countries which included Indonesia, Mexico, Costa Rica, Panama, Nicaragua, Sri Lanka and Singapore.

72 On 24 October 2022, police obtained information that you were scheduled to arrive at Melbourne Tullamarine Airport on 25 October 2022 at 7:50am. Police were in attendance at the airport and arrested you. You were taken to the Melbourne West Police Station where you were interviewed.

73 At the interview, you made the following comments before exercising your right to remain silent:

(a) your nickname was 'Rio';

(b) you were 49 years old, having been born in March 1973;

(c) you were an Australian citizen and a permanent resident of Australia;

(d) before you left Australia, you were a financial adviser;

(e) you worked for Westpac, NAB and CBA giving clients advice on share and property investments under licence; and

(f) you then commenced your own business in the name Skynet Financial Services under the AFSL (Australian Financial Services Licence) of ANZ.

74 *Forensic accounting analysis*

75 Police investigators and police forensic accountant Margarita Saliba identified that you used your Bank of Melbourne accounts numbered 468412271 and 476063390, in the name of Munro Investments Unit Trust, to receive funds from the victims.

76 Both accounts were opened in 2014 with you as a signatory for them. Forensic analysis of these accounts identified that between 2014 and 2019, you received

a total of about nine million dollars by a way of electronic transfers or cheque deposits from the victims for the purpose of property developments.

77 The analysis revealed the following deposits were received –

(i) $9,044,595 from known victims;

(ii) $131,450 in cash deposits; and

(iii) $2,258,657 from unknown investors.

78 I note that since this analysis was undertaken, four further investors have been identified. They invested a combined $1,104,460.69 with you, and in each case the funds were paid into your bank account and not applied to any property investment.

79 The analysis also revealed the following withdrawals were made:

(a) $7,811,783 transferred into your personal and business bank accounts;

(b) $1,671,428 transferred into your offshore bank account in Bali;

(c) $733,188 used for your personal expenses;

(d) $350,000 transferred to an unknown offshore bank account;

(e) $223,302 in cash; and

(f) $35,000 transferred into your business account.

80 As noted above in relation to Jenifer Hayden and Ann Gallagher, upon their demands, you return a portion of the money you took from those victims. Further, following the plea hearing, the prosecution provided a chart indicating that 14 of the victims had some or all of the money they lost repaid by IOOF, a financial institution that had taken over Financial Services Partners previously owned by ANZ.

81 **Nature and gravity of the offending**

82 Your offending is undoubtedly very serious, its gravity being informed by the following factors:

- it involves 38 victims;
- the total quantum of your offending amounted to over $10,000,000;
- your offending occurred over a five year period;
- your offending was motivated by greed and a desire to maintain your lifestyle, including the purchase of luxury cars, race cars, boats and other luxury items;
- the offending involved a breach of trust where victims relied on your expertise and experience in financial matters;
- in some cases you issued victims with false unit trust or share certificates to mislead them and to cover your deception; and
- your authorisation to practice as a financial planner was suspended in March 2015 and terminated in October 2016. However, you persisted in your deceptive conduct and thus a large portion of your offending occurred while you were unlicensed.

83 The persistence of your offending is also in my view very serious. As submitted by the prosecution, during the offending period you must have been aware that you were sustaining losses and were unable to repay the victims. Nonetheless, you persisted, luring more victims into trusting you with their life savings only for you to deliberately misuse and lose their money.

84 In all the circumstances your offending can only be described as reprehensible, callous and selfish conduct and in my view your moral culpability is very high.

85 **Victim impact statements**

86 A total of 18 victim impact statements were tendered on the plea, from the following victims: Peter Burns, Jennifer Hatfield, Tatiana Korosa, Sebastian Flecken, Gerald Gray, Diana and Edward Millar, Ann and Eugene Gallagher, Howard Thomson and Peggy Ong, John Wallace and Caterina Wallace, Lee De Rooy, Steven Thomson, Carol Elliot and Kathleen King, Geoffrey Field, David Nesci, Jennifer Williams, Greg Waugh, Peter Little, and Randall Boyce. The victim impact statements all eloquently describe the significant impact your offending has on their lives and I have taken each victim impact statement into account.

87 Many of the victims speak of the financial devastation you have caused them through your deceptions. Some have been compelled to sell their homes in order to adjust to their reduced financial circumstances; others have had to delay retirement or apply for Centrelink. The victims who engaged solicitors to try to recoup their money from you are now out of pocket for those legal costs. In many cases, the financial strain you have caused your victims has impacted upon their marriages, friendships and other social relationships, especially in cases where victims, unaware of your deceit, referred their friends and family members to you in the belief that they were involving them in a lucrative investment opportunity.

88 You had pre-existing relationships with many of the victims, having managed their finances and investments prior to the commencement of your offending. These victims describe how you would lull them into a false sense of security, with one victim in particular noting how you would visit her at her retirement home, bringing flowers and taking her out to lunch.[3] Another one of your victims was your former personal trainer. You encouraged him to invest in your schemes and also encouraged him to get his parents involved.[4] Another victim says he now faces the thought of your deception every day, and 'most likely will for the

[3] VIS of Jennifer Hatfield.
[4] VIS of David Nesci.

rest of [his] life'.[5] It is overwhelmingly clear from these victim impact statements that you took advantage of people who had placed their trust in you, many of whom were older and looking forward to a comfortable retirement.

89 **Personal circumstances**

90 You were born in in 1973 in Sri Lanka, an only child. Your family migrated to Australia as skilled migrants shortly after your birth. Your father, who had worked for Mercedes Benz in Sri Lanka, found work as a sales manager for Mercedes Benz in South Melbourne. He was an alcoholic, and this became an issue in your parents' marriage. They separated in 1982, and your father passed away shortly thereafter in 1985. Your mother worked as a nurse in Pascoe Vale and she is now retired. She remarried in the early '90s, to your stepfather James, who mentored you in financial services. Your mother and stepfather have now severed ties with you due to your offending.

91 You married your wife in 2006 after meeting through a mutual friend, and together you have one child, who is now 11 years old. It was a happy relationship, but due to your offending and incarceration, the two of you have now separated and you have not spoken to your wife or daughter since August this year. You have not had any visitors whilst in custody, or indeed any other forms of communication.

92 You began your education in Coburg but ultimately completed high school at Mooroolbark Secondary College when your family relocated to Croydon. You have an advanced diploma in financial services from Tribeca Education and Training, and you worked in the banking industry before founding Skynet. Whilst on remand, you have obtained employment within the prison working in the kitchen and serving the prison officers. I take into account the various certificates you have obtained through completing prison education programs. Also tendered on the plea was a negative urine screen result, which confirms you have not

[5] VIS of Stephen Thomson.

been using substances whilst on remand, although in any case there is no material before the court to suggest you have had substance use issues in the past.

93 **Sentencing considerations**

94 Mr Sturges, who appeared on your behalf, highlighted a number of matters in mitigation. The first of these is your plea of guilty. There was no contested committal. In the circumstances, your plea has been entered early and as such has saved considerable time and expense as trials of this nature are often complex and lengthy. Importantly, your plea has avoided the need for the victims to have to give evidence. Your plea demonstrates your willingness to conclude the matter at the earliest opportunity thereby facilitating the course of justice. Further, although the pressure on the courts as a result of the pandemic is beginning to ease, the plea still carries additional weight as it has been entered while the backlog of cases is still being managed, which must be reflected in a more pronounced amelioration in sentence.[6]

95 It was submitted that over and above the plea of guilty there is evidence of genuine remorse. Mr Sturges highlighted your voluntary return to Australia even though you knew you were facing these criminal charges, indicating a willingness face the charges.

96 Mr Brown, who appeared on behalf of the Director of Public Prosecutions, notes that the police started their investigation into you only a few months after you had left the country, and by that stage you had already disposed of your assets, including your house. You clearly sought to avoid your wrongdoing and start afresh in a new location with no regard for the numerous victims lives you had financially ruined. Having failed at attempted business ventures overseas, you returned to Australia where you are a citizen and you were arrested. In the

[6] *Worboyes v The Queen* [2021] VSCA 169 at [39].

circumstances, whatever your reason was to return to Australia, I am not satisfied it was motivated by your contrition.

97 It was further submitted that the brief letter you wrote to the court, dated the same day as the plea hearing, is further evidence of remorse. The letter consists of two sentences where you apologise generally to the victims for your conduct. Letters of this nature, coming very late, are often viewed with scepticism by the courts. In my view, at best the letter confirms your acceptance of responsibility and perhaps, to a limited degree, that you are developing some insight into the magnitude of your offending.

98 Deterrence both general and specific, are relevant sentencing considerations. Mr Brown also submitted that denunciation of your conduct and protection of the community are relevant considerations in the circumstances. I agree. Your conduct was calculated and prolonged involving numerous victims, many of whom continue to suffer the effects of your conduct. While ASIC issued a banning order against you on 24 March this year, as the evidence discloses, during the offending period you continued your criminal conduct after your licence to provide financial services was suspended, and then revoked. The fact that you had lost your licence did nothing to deter you from representing yourself as a licensed, trustworthy financial advisor to many of your victims. Thus, while you have no prior convictions, in my view specific deterrence must still carry some weight in the sentencing discretion.

99 Regarding your prospects of rehabilitation, Mr Sturges submitted that they ought to be assessed positively, given your lack of mental health and substance use issues, and also due to the fact that you are a first time offender. While these matters are relevant and I do take them into account, as noted above, there is limited evidence as to your remorse and insight and as such, in the circumstances, in my view your prospects of rehabilitation must be assessed with a degree of caution.

100 Finally, I must also take into account the fact that you stand to be sentenced as a Continuing Criminal Enterprise offender pursuant to s 6I of the *Sentencing Act 1991* ('*Sentencing Act*'), on all but two of the 39 charges on the indictment, being charges 11 and 21. As a consequence, the maximum penalty that applies to charges 1 to 10, 12 to 20 and 22 to 39 is 20 years imprisonment.

101 **Sentence**

102 Terence Nugara, would you please stand.

103 Terence Nugara, on all charges you are convicted and sentenced as follows –

- On Charges 1 and 19, 4 years and 6 months imprisonment on each charge. Charge 1 will be the base sentence.
- On Charges 13, 14, 17, 25 and 37, 3 years imprisonment on each charge.
- On Charges 7, 9, 16 and 34, 2 years and 6 months imprisonment on each charge.
- On Charge 4, 2 years and 3 months imprisonment.
- On Charges 2, 3, 6, 10, 24 and 27, 2 years imprisonment on each charge.
- On Charge 8, 1 year and 9 months imprisonment.
- On Charges 15, 18, 22, 23, 29, 31 and 39, 1 year and 6 months imprisonment on each charge.
- On Charges 26, 30 and 38, 1 year and 3 months imprisonment on each charge.
- On Charges 5, 11, 12, 20, 21, 28 and 32, 1 year imprisonment on each charge.
- On Charges 33, 35 and 36, 9 months' imprisonment on each charge.

104 I direct that 6 months of the sentence on Charge 19, 3 months of the sentence on Charges 13, 14, 17, 25, and 37, 2 months of the sentence on Charges 2, 3, 4, 6, 7, 8, 9, 10, 16, 24, 26, 27 and 34, and 1 month of the sentence on Charges 11, 12, 15, 18, 20, 21, 22, 23, 28, 29, 30, 31, 32, 33, 35, 36, 38 and 39 be served cumulatively on each other and on Charge 1, making for a total effective sentence of 9 years and 11 months. I direct that you serve 6 years and 6 months before becoming eligible for parole.

105 Pursuant to s 6J of the *Sentencing Act* I note that you are sentenced as a Continuing Criminal Enterprise offender on Charges 1 to 10, 12 to 20, and 22 to 39.

106 Pursuant to s 18 of the *Sentencing Act*, I declare that 345 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.

107 Pursuant to s 6AAA of the *Sentencing Act*, if not for your plea of guilty, I would have sentenced you to a period of imprisonment of 13 years with a non parole period of 9 years and 6 months.

| Charge | Offence | Rolled up | Total amount | Sentence | Cumulation |
|---|---|---|---|---|---|
| 1 | OFAD | Yes | $1,012,901 | 4y 6m | Base |
| 2 | OFAD | Yes | $180,000 | 2y | 2m |
| 3 | OFAD | Yes | $165,000 | 2y | 2m |
| 4 | OFAD | No | $300,000 | 2y 3m | 2m |
| 5 | OFAD | No | $50,000 | 1y | - |
| 6 | OFAD | Yes | $195,500 | 2y | 2m |
| 7 | OFAD | Yes | $306,500 | 2y 6m | 2m |
| 8 | OFAD | No | $232,000 | 1y 9m | 2m |
| 9 | Theft | Yes | $367,788 | 2y 6m | 2m |
| 10 | OFAD | No | $244,000 | 2y | 2m |
| 11 | OFAD | Yes | $105,000 | 1 y | 1m |
| 12 | OFAD | Yes | $67,056 | 1y | 1m |
| 13 | OFAD | Yes | $515,747.25 | 3y | 3m |
| 14 | OFAD | Yes | $500,000 | 3y | 3m |
| 15 | OFAD | Yes | $153,000 | 1y 6m | 1m |
| 16 | Theft | Yes | $308,637 | 2y 6m | 2m |
| 17 | OFAD | Yes | $580,000 | 3y | 3m |
| 18 | OFAD | Yes | $130,000 | 1y 6m | 1m |
| 19 | OFAD | Yes | $1,100,000 | 4y 6m | 6m |
| 20 | OFAD | No | $100,000 | 1y | 1m |
| 21 | OFAD | Yes | $100,000 | 1y | 1m |
| 22 | OFAD | Yes | $180,000 | 1y 6m | 1m |
| 23 | OFAD | Yes | $111,970 | 1y 6m | 1m |
| 24 | OFAD | Yes | $200,000 | 2y | 2m |
| 25 | OFAD | Yes | $577,768 | 3y | 3m |
| 26 | OFAD | No | $135,294 | 1y 3m | 2m |
| 27 | OFAD | Yes | $177,339.09 | 2y | 2m |
| 28 | OFAD | No | $113,809 | 1y | 1m |
| 29 | OFAD | Yes | $140,898 | 1y 6m | 1m |
| 30 | OFAD | No | $150,000 | 1y 3m | 1m |
| 31 | OFAD | Yes | $144,000 | 1y 6m | 1m |
| 32 | OFAD | No | $100,000 | 1y | 1m |
| 33 | OFAD | No | $80,000 | 9m | 1m |
| 34 | OFAD | Yes | $349,589 | 2y 6m | 2m |
| 35 | OFAD | No | $58,500 | 9m | 1m |
| 36 | OFAD | No | $50,000 | 9m | 1m |
| 37 | OFAD | Yes | $501,466.53 | 3y | 3m |
| 38 | OFAD | No | $148,000 | 1y 3m | 1m |
| 39 | OFAD | Yes | $140,299 | 1y 6m | 1m |

| | |
|---|---|
| **Total Effective Sentence:** | 9 years, 11 months |
| **Non-Parole Period:** | 6 years, 6 months |
| **Pre-sentence Detention Declared:** | 345 days |
| **Section 6 AAA Statement:** | 13 years with a NPP of 9 years, 6 months |

**Other Relevant Orders:**
1. Continuing Criminal Enterprise offender on Charges 1 to 10, 12 to 20 and 22 to 39.

## Terence Nugara – Sentencing table

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